IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 980 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIJI DEVGAJI CHAUHAN : Appellant.

Versus

STATE OF GUJARAT: Respondent.

Appearance:

Mr. Budhbhatti, Amicus Curiae for appellant.

Mr. B.D. Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE H.R.SHELAT

Date of decision: /01/2001

JUDGEMENT

(Per : MR.JUSTICE H.R.SHELAT)

This appeal is directed against the judgment and

order dated 30th October 1990 passed by the then learned Sessions Judge for the District of Banaskantha at Himatnagar in Sessions Case No. 40 of 1990, convicting the appellant of the offence of murder punishable under Section 302, Indian Penal Code and sentencing him to suffer imprisonment for life. It may in short be stated how the appellant came to be in tight corner of criminal proceeding.

2. Popatji Becharji is the brother of Kiransinh who has been murdered. On 2nd April 1990 in the evening Popatji Becharji was at his house. Vagusinh Mankusinh Chauhan his uncle had gone to the field in the Sim of village Kesharpura. After 9.00 p.m. Vaghusinh Mankusinh went to the house of Popatji Becharji and informed him that just now near the trough of water for the cattle the appellant showered knife blows on the person of Kiransinh and ran away. On receipt of such information Popatji Becharji, Godarsinh Harisinh, Godarsinh Palusinh & others went to the scene of offence where they found Kiransinh lying in wounded condition. When they examined him they found him dead. On the chest there were wounds. Why the incident had happened could be realised by Popatji Becharji. The appellant had a doubt that the deceased had cultivated illicit relation with his sister Hiraben. Few months prior to the incident in this regard the elders in the family had assembled and the matter was settled. Kiransinh the deceased had assured not to continue to maintain the relations with Hiraben. However, on the day of incident the deceased and Hiraben were found together at the odd hours at the outskirt of the village. Seeing both together at the odd hours, the appellant was enraged as there was a breach of assurance and he showering the knife blows caused injury to Kiransinh to which Kiransinh succumbed. Popatji Becharji then went to the Jadar police station on 3rd April 1990 to lodge the complaint. On receipt of the FIR, the Police Officer of the said police station took the investigation on hand. At the conclusion of investigation, he found that a worth triable case relating to the offence of murder against the appellant was emerging from the materials he had collected and statements he had recorded. He therefore filed the chargesheet relating to the offence of murder against the appellant in the Court of the Judicial Magistrate (F.C.) at Idar. The learned Magistrate was not competent to try the case of murder. He therefore committed the case to the Court of Sessions at Himatnagar which then came to be registered as Sessions Case No. 40/90. The then learned Sessions Judge framed the charge against the appellant to which the appellant pleaded not guilty and claimed to be

tried. The prosecution then adduced necessary evidence. Appreciating the evidence before him, the then learned Sessions Judge reached the conclusion that the prosecution had succeeded in establishing the charge of murder against the appellant. He therefore convicted the appellant of the offence of murder punishable under Section 302 of Indian Penal Code and sentenced him to suffer imprisonment for life. It is against that judgment and order, the original-accused has preferred this appeal.

3. The learned advocate, Mr. Budhbhatti who showed his willingness to represent the appellant after studying the papers submits that he would not be able to assail the judgment and order so far as establishment of the wrong having been done by the appellant but he would like to submit about the applicability of a penal provision not Section 302 of the Indian Penal Code, found to be applicable by the Court of Sessions, but another provision of a lesser offence. According to him, the wrong has been done by the appellant under grave and sudden provocation and therefore not Section 302 but Section 304 Part II will come into play. The deceased as it appears from the evidence on record was related to the appellant. The deceased had therefore cultivated intimacy with Hiraben the sister of the appellant. When elders in the family came to know once for all it was decided to close the chapter settling the matter. Every one at the meeting after ponderability thought it wise to remonstrate and let off rather than making the issue a mountain of a mole-hill. The chapter was closed and every one then assumed that deceased and Hiraben would not see each other under any pretext and profligacy if at all there was any would not be repeated. However, when the appellant found his sister in the company of the appellant at odd hours at the outskirts of the village on the day of incident he lost the control of his mind and because of grave & sudden provocation he caused fatal injury to Kiransinh. When accordingly the wrong has been done, Exception 1 to Section 300 would come into play.

4. In reply to such contention, the learned APP, Mr. B.D. Desai submits that the learned Sessions Judge has committed no error in convicting and sentencing the appellant of the offence of murder punishable under Section 302. The appellant had gone with the knife and the blow was given not on any other part of the body but on the chest, the vital part as a result the heart was punctured. The evidence of Vaghusinh Mankusinh Ex.16, Gulamali Kadarali Fakir Ex.17, and Sabhirshah Imamshah Fakir Ex.18 who have seen the incident in clear terms

establishes that the appellant on the day, time and place alleged by the prosecution gave knife blows to Kiransinh the deceased and caused his death. The wrong has thus no doubt been done by the appellant, which squarely falls within the ambits of Sec. 302, I.P. Code.

5. It may be stated that the evidence of Vaghusinh Mankusinh (Ex.16), Gulamali Kadarbhai (Ex.17) and Sabirsha Imamsha (Ex.18) the eye witnesses supported by the evidence of doctor C.A. Vohra (Ex.35) and opinion of FSL (Ex.11) as well as other materials on record in clear terms establishes that the appellant seeing the deceased in the company of her teenager sister caused injury to the deceased on chest by the knife as a result the deceased died. Such facts are not challenged. In view of the rival contentions, however the only point that arises for consideration is whether the wrong done would fall within the ambits of Section 302, Indian Penal Code or any other penal provision of Indian Penal Code providing lesser punishment. The applicability of one provision in place of the provision already applied is sought on the ground of grave & sudden provocation. It may be stated that culpabable homicide is not murder if the accused deprived of the power of self-control by grave and sudden provocation causes the death of a person who gave the provacation and that is what Exception 1 to Section 300 lays down. Whether a particular act or incident would cause grave and sudden provocation depends upon variety of circumstances like the social status of the accused or the prevailing ethos of the community and so on. So far as sexual relations are concerned, our Society has adopted certain moral standards. Any one transgressing the limits of those standards is seriously viewed by the Society and it is expected that a person committing breach of moral standards must harshly be cracked down upon. Any one therefore sees his own wife or sister or female family member with a stranger indicating or reflecting cultivation of intimacy dehors the moral standard, he would naturally be enraged and lose the self-control because of grave and sudden provocation and would then commit the wrong.

6. The evidence on record shows that on the day of incident at 9.00 p.m. when the accused was passing by the road at the outskirts of the village, he saw his sister Hiraben and the accused having intimate moment. Under the guise of answering the naturalcall Hiraben had gone out taking the canister. The appellant was enraged because 3 months prior to the incident when a parley of the elders in the family was arranged, it was assumed that the chapter was closed forever but the deceased had

betrayed disregarding his assurance, and had continued to maintain intimate relations. He could also realise seeing his sister there that she was being depraved extra-marital relations. In such circumstances, the appellant, t he right-thinking person was enraged as he because of social standards considered immoral or enormous life to be the indign & immodest. He having been enraged because of profligacy and licentiousness he could notice seeing his sister with the deceased, lost control of his mind. Owing to such grave and sudden provocation he giving 3 to 4 slaps to his sister, (who then ran away leaving canister there) assaulted the deceased and committed the wrong by giving knife blows. His sister had run away otherwise perhaps he would have caused more serious harm to his sister also. The appellant has in view of the facts committed the offence under grave and sudden provocation and not by due deliberation. The learned Sessions Judge has given no weightage to such facts assigning inept reasoning and has fallen into error by convicting the appellant of the offence under Section 302, Indian Penal Code. In our view, when the wrong is done because of grave and sudden provocation, Exception 1 to Section 300 Indian Penal Code will come into play and as per that Exception, in the case on hand, the culpable homicide cannot be said to the murder but the same is a culpable homicide not amounting to murder. The injury is caused on the chest, and while causing such bodily injury the appellant must be knowing fully well that the injury he was causing was likely to cause death and therefore Section 304 Part II will apply. The appellant is therefore liable to be punished not so severely as that of the case of murder but under Section 304 Part II, providing lesser punishment.

7. Ordinarily in the villages, the farmers keep pen knife with them so that the same can be used in the field for the purpose of cutting the fruits or vegetables or even cutting small thin branches of the tree or plants and also for some agricultural operations. The appellant was as per the muddamal note having a pen knife about 7 inches in length. It was therefore not a knife which no one ordinarily will keep in the pocket for domestic use or agricultural operation. When that is so, if a man at the time of incident is having a knife with him one cannot jump to the conclusion that the accused had gone to the scene of incident with due deliberation of committing a particular wrong. Secondly the appellant was not knowing some times before he went too the scene of incident that his sister and the deceased were having tete-a-tete at the odd hours. What appears from the evidence is that he when accidentally happened to pass by

the road could see the appellant and his sister Hiraben. In view of such fact his going to the scene of incident with due deliberation of committing the murder cannot be assumed as canvassed.

8. In some cases the blow given on a vital part of the body would be the decisive factor so as to judge the intention, but the intention being a mental process, has to be judged not only on the basis of the blow having been given on the vital part alone but also considering other facts and circumstances on record. In the case on hand, seeing one's own sister with the appellant at the night time at the outskirts of the village, the appellant lost the temper and because of such grave and sudden provocation he committed the wrong. Such facts on record when show that the wrong done is the result of grave & sudden provocation, the intention of murder cannot be attributed to the appellant as canvassed by the learned APP.

9. For the aforesaid reasons, this appeal is required to be partly allowed. The same is accordingly partly allowed. The order convicting and sentencing the accused of the offence of murder is hereby set aside and the appellant is acquitted of the offence punishable under Section 302 but he is convicted of the offence punishable under Section 304 Part 2 and is sentenced to 10 years rigorous imprisonment and a fine of Rs. 2000/=, in default to undergo rigorous imprisonment for 9 months more. The order regarding disposal of muddamal is maintained.

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